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In the Matter of

Inquiry Concerning High Speed
Access to the Internet Over
Cable and Other Facilities

GN Docket No. 00-185

To: The Commission

Reply Comments of the Alliance for Community Media

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TABLE OF CONTENTS

	PAGE
I. SUMMARY	1
II. THE ALLIANCE FOR COMMUNITY MEDIA AGREES WITH AND SUPPORTS THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS (NATOA) THAT INTERNET ACCESS THROUGH THE CABLE MODEM IS A CABLE SERVICE SUBJECT TO REGULATION BY THE LOCAL FRANCHISING AUTHORITY	1
III. THE ALLIANCE FAVORS OPEN ACCESS BECAUSE OF THE POSSIBILITY THAT CABLE OPERATORS COULD CONTROL CONTENT AND ROUTE CUSTOMERS TO PREFERRED CONTENT SITES	2
IV. LOCAL FRANCHISING AUTHORITIES MUST BE ABLE TO ENCOURAGE COMPETITION AND VARIETY IN THE DELIVERY OF CABLE PROGRAMMING SERVICES	3
V. CABLE OPERATORS ARE PRIVILEGED USERS OF PUBLIC PROPERTY SUBJECT TO LOCAL REGULATION AND MANAGEMENT OF LOCAL "RIGHTS OF WAY"	4
VI. CONCLUSION	5

**Before the
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In the Matter of

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GN Docket No. 00-185

To: The Federal Communications Commission

REPLY TO COMMENTS MADE BY THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS AND THE NATIONAL CABLE
TELEVISION ASSOCIATION

I. SUMMARY

The Alliance for Community Media (Alliance) is a public interest non-profit organization which represents the interests of community media centers throughout the United States. The Alliance's members represent over 5,000 cable access channels (several operating community radio stations) and often act as Internet service providers for their communities.

The Alliance believes that cable modem services are cable services and as such should be subject to local franchising authority. Local franchising authorities are best suited to address the public concerns and adopt adequate regulations that both ensure consumer protection and development of high speed Internet service.

II. THE ALLIANCE FOR COMMUNITY MEDIA AGREES WITH AND SUPPORTS THE COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS (NATOA) THAT INTERNET ACCESS THROUGH THE CABLE MODEM IS A CABLE SERVICE SUBJECT TO REGULATION BY THE LOCAL FRANCHISING AUTHORITY

The Alliance agrees with the National Association of Telecommunications Officers and Advisors (NATOA) in its comments that "there is an existing and adequate legal and policy framework for the classification and regulatory treatment of cable modem service," that being the local franchising authority.

We further agree that the FCC needs to state authoritatively that cable modem service is subject to the full range of regulatory authority placed in local governments and the FCC as specified in the 1984 Federal Cable Act, as amended.

By ruling in agreement with the position of NATOA, the FCC will meet its four “complementary goals” identified in the NOI, para 2. In particular, such ruling would meet the goal to instill a measure of regulatory stability in the market which will in turn encourage investment in all types of high-speed networks and innovation in high speed services.

We also agree with the National Cable Telecommunications Association (NCTA) that cable modem services are “best classified, for regulatory purposes, as a cable service.” Contrary to NCTA’s position, however, bringing cable modem service under the full regulatory authority of the local franchising authority, subject to the same regulatory framework as any other cable service, including local franchise requirements and franchise agreements is the logical consequence of this position.

III. THE ALLIANCE FAVORS OPEN ACCESS BECAUSE OF THE POSSIBILITY THAT CABLE OPERATORS COULD CONTROL CONTENT AND ROUTE CUSTOMERS TO PREFERRED CONTENT SITES

The Alliance fears that without adequate regulation of high speed Internet service at the local level, customers could be blocked from viewing the content they desire and routed to cable company affiliated sites. The Alliance strongly disagrees with NCTA’s claim that “The idea that cable modem service operators could ‘control’ Internet content by directing subscribers to preferred content through caching similarly does not comport with market realities.”

In fact, there is evidence that cable operators can, and undoubtedly in many cases will, control the content that customers have access to. In an article entitled “What AT&T’s Cooking: Managed Content, More” in the November 27, 2000 issue of *Multichannel News*, AT&T is reported to be preparing to launch “managed-content areas.” These areas would be sole domain of a select number of companies, have AT&T provided email service, interactive advertising and a system that would store customer’s information and put it on merchant companies’ templates.

Another example of the cable industry’s ability to control and route content comes from the United States Senate Subcommittee on Antitrust, Business Rights and Competition. Chairman Mike Dewine (R-OH) and Ranking Member Herb Kohl (D-WI) wrote to Federal Trade Commission Chairman Robert Pitofsky and Federal Communications Chairman William Kennard on May 10, 2000, expressing their concern about access to the Internet and “routing” and “caching.”

“In evaluating. . . Internet and media competition generally, one of our primary concerns has been ensuring that content is delivered on a non-discriminatory basis in order to promote the greatest possible diversity of expression and competition in the marketplace of ideas. In this context, we understand that Cisco Systems makes ‘routers’ that allow cable broadband providers to control access speeds to Internet sites. While we recognize that there are clearly valid uses for this technology – such as ensuring quick access to popular web sites and not

dedicating too much broadband capacity to sites that are rarely used – it also raises some concerns because it permits ISPs to give preferential treatment to sites with which the ISP is affiliated. Indeed, a Cisco Systems ‘White Paper’ entitled ‘Controlling Your Network – A Must for Cable Operators’ notes that by using its devices cable operators ‘could promote and offer your own or partner’s services with full-speed features to encourage adoption of your services, while increasing network efficiency.’ Using this technology it appears that it would be possible, for example, for the combined AOL/Time Warner to slow down traffic to the ESPN web site while speeding it up to its own competing CNN/Sports Illustrated site or for the MSN ISP to slow down traffic to the Fox News site while speeding up traffic to its own affiliated MSNBC site.”

The cable industry has both the technology and the interest to control content and route customers. Such practices would hurt consumers and limit competition. The Alliance believes that only through local regulation of cable modem service and open access can these particular concerns be alleviated.

IV. LOCAL FRANCHISING AUTHORITIES MUST BE ABLE TO ENCOURAGE COMPETITION AND VARIETY IN THE DELIVERY OF CABLE PROGRAMMING SERVICES

Local franchising authorities have jurisdiction to require cable operators to provide a wide range of programming services and access to program providers. Just as local franchising authorities may require Public, Educational and Governmental (PEG) access capacity, they also have authority to require cable operators to accommodate multiple internet service providers when justified by community needs and interests.

The need for local franchising authorities to be able to require such open access will be particularly true as internet services increasingly become “programming services” with video streaming capability. It is no secret that the intent of cable operators is to converge internet services with video programming services to provide a seamless interactive video viewing experience. Whether it is Video on Demand (VOD) or data delivered as video, the difference between data delivery and video delivery will soon be negligible. A major goal of the cable industry is to provide “interactive video services,” to give the consumer full interactive video capability. This is evidenced in the AOL/Time Warner merger by the announcement of “AOL TV.” No longer will AOL simply be an internet service provider, or ISP, but AOL will be a cable “programmer.”

In the interest of preserving multiple sources of information and viewing experiences for the cable modem consumer, franchising authorities must continue to have the regulatory power to require cable operators to carry multiple programming providers. To say that an ISP is simply a provider of access to data is to wrongly classify current industry trends toward comprehensive data/video convergence.

V. CABLE OPERATORS ARE PRIVILEGED USERS OF PUBLIC PROPERTY SUBJECT TO LOCAL REGULATION AND MANAGEMENT OF LOCAL “RIGHTS OF WAY”

Local cable franchising allows the local community to require the cable operator to satisfy the public interest. It allows local communities to determine how local needs will be met and whether “open access” meets the needs of the consumer. The local regulation of cable modem service as “cable services” allows local authorities to protect consumers, resolve consumer complaints, regulate the even deployment of broadband services, require a minimum level of customer service, ensure that technical upgrades and repairs are made in a timely manner, monitor billing procedures and accommodate high demand cable modem consumers.

In exchange for the use of these rights of way, local franchising authorities must be able to seek fair compensation for use. To allow cable operators to “add on” services such as cable modem and not include the receipts from those services in calculating gross revenue for the cable operator is to tie the hands of the local franchising authority to collect fair compensation for use of public rights of way. Not including cable modem service in the calculation of gross revenue would deprive communities of compensation for use of public property. Cable modem service is a cable service (this point is agreed to by both NCTA and NATOA) and should be treated no differently than any other cable service, subject to local franchising regulation and subject to franchise fees.

VI. CONCLUSION

For the above reasons, the Alliance for Community Media supports the comments of the National Association of Telecommunications Officers and Advisors (NATOA). We also agree with both NATOA and the National Cable Television Association that cable modem service is a cable service. We support regulation of cable modem service at the local level, through the franchising process, to promote competition, open access to information and to prevent monopolies in high speed Internet service. Local franchise authorities that so chose should be able to require open access in franchise agreements. We urge the Commission to appropriately classify cable modem service as a cable service and give local franchise authorities the ability to regulate it as necessary to protect consumers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Bunnie Riedel", written over a horizontal line.

Bunnie Riedel

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